

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed February 25, 2009. At the time of the Office Action, Claims 1-8 were pending in this Application. Claims 1-8 were rejected. Claims 1, 2 and 8 have been amended. Applicant respectfully requests reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 112

Claims 1-2 were rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicant amends Claims 1 and 2 to overcome these rejections and respectfully request full allowance of all claims as amended.

Rejections under 35 U.S.C. § 102

Claims 1-3 and 7-8 were rejected by the Examiner under 35 U.S.C. §102(E) as being anticipated by U.S. Patent No. 6,317,418 issued to Mika Raitola et al. ("*Raitola*"). Applicant respectfully traverses and submits the cited art does not teach all of the elements of the claimed embodiment of the invention.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicant respectfully submits that the cited art as anticipated by the Examiner cannot anticipate the rejected Claims, because the cited art does not show all the elements of the present Claims.

Claims 1 and 8 recite that "the common channel description further comprises information about utilization of the plurality of channel resources by the subscriber station during the radio transmission, which specifies an order of transmission of data for the predefined transmission direction." According to the specification, "[i]n a case where, for example, more than only one physical channel is to be provided to the user for the purpose of

real-time data transmission in one direction, the order in which the channels are to be used is unambiguously specified in the channel description in a further embodiment.” (Specification at 6:19-24).

A premise of the rejection is that

Raitola teaches the channel description includes information about utilization of the channel resources during the radio transmission, which specifies an order of the transmission of data for the one transmission direction (see col. 11, lines 1-3, Forward Order specifying which transmission unit and on which channel a terminal having a certain ID should transmit reads on specifying an order of the transmission of data for the one transmission direction).

(OA at 4). However, this premise fails because Raitola does not teach identification of a plurality of channels for a specific transmission. Col. 5, lines 20-23 of *Raitola* merely discloses the use of a base station and a mobile subscriber terminal. Col. 11, lines 1-3 merely states that the network part (base station) announces on which particular channel a subscriber terminal should transmit a certain transmission unit. The subscriber terminal is identified by a certain RID and has to monitor the occurrence of the RID on the control channel CCH and when it finds its own RID on this channel it transmits the data on this channel. *Raitola*, col. 11, lines 4-10. Raitola discloses an order channel on which the network announces to a subscriber terminal that it is allowed to transmit on transmission units. The order channel of Raitola thus defines an order of the usage of the transmission units over time by a sequence of such indications to different subscriber terminals in the order channel. Raitola, however, does not disclose that the order channel carries any information relating to the order (sequence) of the usage of assigned channel resources by a single subscriber station. Thus, according to Raitola, no common channel description is transmitted that identifies a plurality of channels that are assigned for a specific transmission.

A further premise of the rejection is that *Raitola* discloses in col. 10, lines 65-67 that a common channel description also specifies in which order data is to be transmitted over the identified channels. (OA at 4). This premise fails because no common channel description is transmitted that identifies a plurality of channels, much less an order in which the channels of the identified plurality of channels are to be used. According to *Raitola*, a subscriber terminal must constantly listen to the control channel until his RID is identified. Only then the subscriber terminal will know that he can use this channel. *Raitola*, col. 11, lines 4-10.

Thus, the concept of *Raitola* is to indicate in real time which channel can be used for transmission by a subscriber terminal. This concept requires a permanent transmission of data on the control channel to control the actual data transmission. Contrary to this concept, the method and apparatus as defined in the independent claims transmit a common channel description to the subscriber terminal that includes information about which channels are used and in which order they have to be used.

Therefore the invention as claimed in claims 1 and 8 is patentable in view of *Raitola*. The invention as claimed in the dependent claims is patentable for similar reasons.

Rejections under 35 U.S.C. §103

Claims 4-6 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Raitola* in view of U.S. Patent 6,388,999 issued to Thomas E. Gorsuch et al. ("*Gorsuch*"). Applicant respectfully traverses and submits the cited art combinations, even if proper, which Applicant does not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

Claim 1 recites that “the common channel description further comprises information about utilization of the plurality of channel resources by the subscriber station during the radio transmission, which specifies an order of transmission of data for the predefined transmission direction.” According to the specification, “[i]n a case where, for example, more than only one physical channel is to be provided to the user for the purpose of real-time data transmission in one direction, the order in which the channels are to be used is unambiguously specified in the channel description in a further embodiment.” (Specification at 6:19-24).

As noted above, *Raitola* fails to teach this claim element. Similarly *Gorsuch* fails to teach or suggest that “the transmitted common channel description identifies a plurality of channels that are assigned for a specific transmission and comprises information about an order in which the channels of the identified plurality of channels are to be used.” Therefore, the invention as claimed in claim 1 is patentable in view of the combined teachings of *Raitola* and *Gorsuch*. The invention as claimed in claims 4-6 is patentable for similar reasons.

Request for Interview

To facilitate communications concerning this application, Applicants respectfully request a personal interview with the examiner. While the undersigned will call to attempt to schedule an interview, the examiner is invited to call the undersigned counsel at 512.457.2026 for such purpose.

Association of Customer Number and Change of Correspondence Address

Applicants respectfully request that all papers pertaining to the above-captioned patent application be associated with Customer No. **86528**, and direct all correspondence pertaining to this patent application to practitioners at Customer Number **86528**. All telephone calls should be directed to counsel at 512.457.2026. A Revocation and Power of Attorney will be filed shortly.

CONCLUSION

Applicant has made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicant respectfully requests reconsideration of the pending claims.

Applicant respectfully submits a Petition for Two-Month Extension of Time. The Commissioner is authorized to charge the fee of \$490.00 required to Deposit Account 50-4871 in order to effectuate this filing.

Applicant believes there are no additional fees due at this time. However, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-4871 of King & Spalding LLP.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.457.2026.

Respectfully submitted,
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Date: July 24, 2009

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